

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2358

IN THE MATTER OF:

Served August 16, 1982

Application of JAMES M. SMITH,)
INC., for Special Authorization to)
Perform Charter Operations Pursuant)
to Contract -- National Institutes)
of Health)

Case No. CP-82-04

By application filed June 11, 1982, as amended, James M. Smith, Inc., seeks authorization to operate pursuant to WMATC Special Certificate of Public Convenience and Necessity No. 1 under contract with the National Institutes of Health (NIH) transporting NIH patients, outpatients and their parents and guardians, together with mail, express and baggage in the same vehicle with passengers, between points in the Metropolitan District.

Order No. 2350, served July 16, 1982, granted the application for reconsideration filed by protestant Beltway Limousine Service, Inc., and found that the involved transportation was not being provided to members of a qualifying association pursuant to a contract with a qualifying association. Both Smith and Beltway were granted leave to file additional evidence on the issue of whether the users of the transportation were "persons traveling on official business" as defined in Regulation No. 70-02(e).

On July 26, 1982, Smith filed supplemental evidence and legal argument. The supplemental evidence is an affidavit from the chief of the outpatient department of the Clinical Center of NIH. This witness states that NIH is dedicated to studying and conquering serious medical problems affecting people of all ages, and that the Clinical Center is the basic research hospital for NIH. It is proposed that Smith transport patients suffering from a wide variety of medical problems to and from the Clinical Center for research, study and treatment.

NIH secures for study persons suffering from medical problems falling within those areas under research by the component Institutes. Only those patients whose ailment falls within the boundaries of an

ongoing research project are approved for inclusion in the "protocol study". The witness states that, by making themselves available and by cooperating in NIH's testing and research efforts, the patients provide a service to NIH (in exchange for which NIH offers free medical treatment). These patients are, according to the witness, ". . . in a very real sense, providing the services of their time and cooperation to further important research in return for whatever help and therapy we can offer them."

In its rebuttal, filed August 2, 1982, protestant Beltway asserts that the patients do not meet the definition of persons traveling on official business as set forth below, inasmuch as these persons assertedly are not providing services to NIH. Beltway specifically contends that the parents or guardians to be transported provide no service to NIH and also argues that the patients are recipients -- not providers -- of service.

Regulation No. 70-02(e) defines a "person traveling on official business as

an individual other than an employee, student, trainee or member of a qualifying association (i) who is engaged in providing goods or services to the contracting employer, school, governmental agency or qualifying association, (ii) whose transportation is specifically authorized by the contracting employer, school, governmental agency or qualifying association, and (iii) whose transportation promotes the convenience of the contracting employer, school, governmental agency or qualifying association in obtaining said goods or services.

At issue herein is whether the patients and their parents or guardians are engaged in providing services to NIH. We find that this inquiry must be answered in the affirmative.

Clearly, something of value is being exchanged between the patients and NIH, and which party is the real consumer must be determined according to the evidence of record. The affidavit submitted by NIH is uncontroverted and establishes (a) that the primary mission of NIH is health research, (b) that the individuals to be transported are those possessing unique characteristics to be studied by NIH researchers, and (c) that NIH provides medical treatment to those individuals as an incident to its primary mission.

The "real consumer" here is NIH inasmuch as the procurement of persons with specific medical characteristics is necessary for the

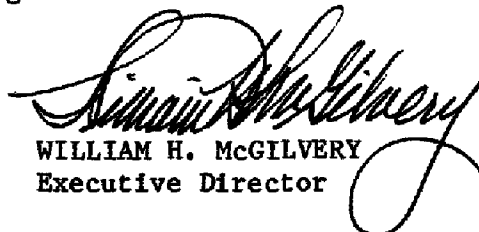
performance of NIH's primary mission. NIH specifically disavows as a mission the provision of medical treatment. Unlike a general hospital or clinic, NIH provides treatment to those in its research programs only as an adjunct to its primary mission and as an incentive for patients to participate in the research programs. The issue raised by Beltway -- whether the value of such medical treatment is taxable as income -- is wholly immaterial to this inquiry. Even if the patients made some monetary payment to NIH for medical treatment received, NIH would remain the real consumer inasmuch as its primary purpose in arranging for transportation is to obtain for research persons with particular medical characteristics as opposed to the income which such persons hypothetically would provide.

The evidence of record further warrants findings, which we hereby make, that the individuals participating in the subject research programs have an ongoing relationship with NIH and that their parents or guardians are also providing a service to NIH to the extent that the patients being transported must be accompanied by a responsible attendant. If NIH were to hire attendants to accompany patients, such hired personnel would clearly be providing NIH with a service for compensation. The fact that the service is provided by a parent or guardian who is compensated only to the extent that out-of-pocket expenses are paid by NIH does not negate NIH's status as the real consumer in its relationship with those parents or guardians.

Accordingly, we find that the proposed transportation of patients, outpatients and those parents or guardians whose attendance is required for the safe and proper transportation of patients and outpatients is the transportation of persons traveling on official business with a government agency within the meaning of Commission Regulation No. 70. Issuance to applicant of an appropriately delimited authorization to operate pursuant to WMATC Special Certificate of Public Convenience and Necessity No. 1 is warranted. Applicant is hereby granted 15 days from the date of service of this order to perfect compliance with the conditions set forth in the last paragraph of Order No. 2348, served June 30, 1982.

IT IS SO ORDERED.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS SCHIFTER AND SHANNON,
Chairman Clement not participating.


WILLIAM H. MCGILVERY
Executive Director